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## *Counsel for James Johnson*

*Counsel for FNY Investment Advisers, LLC*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KALMAN ISAACS, on behalf of himself and  
all others similarly situated,

Case No. 3:18-cv-04865-EMC

Hon. Edward M. Chen

## CLASS ACTION

FNY INVESTMENT ADVISERS, LLC AND  
JAMES JOHNSON'S JOINT  
SUPPLEMENTAL REPLY IN FURTHER  
SUPPORT OF THEIR MOTIONS FOR  
CONSOLIDATION, APPOINTMENT AS  
LEAD PLAINTIFF AND APPROVAL OF  
SELECTION OF LEAD COUNSEL

Date: November 15, 2018

Time: 1:30 p.m.

Place: Courtroom 5, 17<sup>th</sup> Floor

*[Additional captions appear on following pages]*

1 WILLIAM CHAMBERLAIN, on behalf of  
2 himself and all others similarly situated,

3 Plaintiff,

4 vs.

5 ELON MUSK and TESLA, INC.,

6 Defendants.

Case No. 3:18-cv-04876-EMC

7 JOHN YEAGER, individually and on behalf of  
8 all others similarly situated,

9 Plaintiff,

10 vs.

11 ELON MUSK and TESLA, INC.,

12 Defendants.

Case No. 3:18-cv-04912-EMC

13 CARLOS MAIA, on behalf of himself and all  
14 others similarly situated,

15 Plaintiff,

16 vs.

17 ELON MUSK and TESLA, INC.,

18 Defendants.

Case No. 3:18-cv-04939-EMC

20 KEWAL DUA, Individually and on Behalf of  
21 All Others Similarly Situated

22 Plaintiff,

23 vs.

24 ELON MUSK and TESLA, INC.,

25 Defendants.

Case No. 3:18-cv-04948-EMC

1 JOSHUA HORWITZ, Individually and on  
2 Behalf of All Others Similarly Situated

3 Plaintiff,

4 vs.

5 ELON MUSK and TESLA, INC.,

6 Defendants.

Case No. 3:18-cv-05258-EMC

7 ANDREW E. LEFT, Individually and on  
8 Behalf of All Others Similarly Situated

9 Plaintiff,

10 vs.

11 ELON MUSK and TESLA, INC.,

12 Defendants.

Case No. 3:18-cv-05463-EMC

13 ZHI XING FAN, Individually and on Behalf of  
14 All Others Similarly Situated

15 Plaintiff,

16 vs.

17 ELON MUSK and TESLA, INC.,

18 Defendants.

Case No. 3:18-cv-05470-EMC

19 SHAHRAM SODEIFI, Individually and on  
20 Behalf of All Others Similarly Situated

21 Plaintiff,

22 vs.

23 TESLA, INC., a Delaware corporation, and  
24 ELON R. MUSK, an individual,

25 Defendants.

Case No. 3:18-cv-05899-EMC

1 FNY Investment Advisers, LLC (“First New York”) and James Johnson wish to advise  
 2 the Court that on November 8, 2018, they and their counsel met and conferred by conference call  
 3 to discuss the possibility of a co-leadership structure to represent, *i.e.*, non-short-seller, purchasers  
 4 of Tesla common stock in the above-captioned actions. During the conference call, the parties  
 5 discussed their respective backgrounds, their knowledge of the case and their commitment to  
 6 prosecuting claims on behalf of Tesla common stock investors. Both First New York and James  
 7 Johnson agreed that a co-leadership structure involving the appointment of both an institutional  
 8 and an individual investor may best serve the interests of the proposed class of Tesla common  
 9 stock investors.<sup>1</sup> The parties thus propose that the Court consider appointing First New York and  
 10 James Johnson as Co-Lead Plaintiffs and approve their selection of Entwistle & Cappucci LLP,  
 11 Susman Godfrey L.L.P. and Hagens Berman Sobol Shapiro LLP as co-lead counsel for the  
 12 proposed class of purchasers of Tesla common stock.

13 As First New York and James Johnson both noted in their respective Reply briefs,<sup>2</sup> courts  
 14 in the Ninth Circuit and elsewhere often consider it appropriate to appoint both an institutional  
 15 and an individual investor in order to “ensure that all class members will be adequately  
 16 represented in the prosecution of [the] action.” *Weisz v. Calpine Corp.*, No. 4:02-CV-1200, 2002  
 17 WL 32818827, at \*8 (N.D. Cal. Aug. 19, 2002); *see also Yousefi v. Lockheed Martin Corp.*, 70 F.  
 18 Supp. 2d 1061, 1070 (C.D. Cal. 1999). In especially complex or unique securities cases under the  
 19 PSLRA, as here, courts often prefer the appointment of both an institution and an individual  
 20 because such an arrangement allows the lead plaintiffs to “represent a broader range of  
 21 shareholder interests than if the Court appointed an individual or an institutional investor alone.”  
 22 *Yousefi*, 70 F. Supp. 2d, at 1071. More specifically, this arrangement ensures adequate  
 23 representation “in the negotiation and approval of a fair settlement, and that the settlement

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24  
 25 <sup>1</sup> Only First New York and James Johnson have recognized both the inherent intra-class conflicts  
 26 of the various Tesla investor classes as defined in the pending motions and the attendant need for  
 27 separate leadership on behalf of long purchasers of Tesla common stock. As First New York and  
 James Johnson have previously indicated, the proposed class of Tesla common stock purchasers  
 would be well served by the appointment of both an institution and individual as co-lead  
 plaintiffs. ECF Nos. 117 at 3-4; and 113 at 5-8.

28 <sup>2</sup> See ECF Nos. 126 at 8; and 131 at 9.

1 process will not be distorted by the differing aims of differently situated claimants.” *In re Oxford*  
 2 *Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998). For these reasons, the  
 3 proposed class would be well served by the appointment of both First New York and James  
 4 Johnson – the only parties that have recognized the need for separate leadership for long  
 5 purchasers of Tesla common stock.

6 Accordingly, First New York and James Johnson respectfully submit that – to the extent  
 7 the Court considers appointment of Co-Lead Plaintiffs on behalf of long investors in Tesla  
 8 common stock – such investors would be well served by the appointment of First New York and  
 9 James Johnson as Co-Lead Plaintiffs, and Entwistle & Cappucci LLP, Susman Godfrey L.L.P.  
 10 and Hagens Berman Sobol Shapiro LLP as Co-Lead Counsel.

11  
 12 Dated: November 13, 2018

13 /s/ Reed R. Kathrein  
 14 Reed R. Kathrein

15 **HAGENS BERMAN SOBOL SHAPIRO**  
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13 /s/ Marc M. Seltzer  
 14 Marc M. Seltzer

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 LLC*

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